

MEMO# 33181

March 12, 2021

SEC Staff Issues Statement on Cross Trading

[33181]

March 12, 2021 TO: ICI Members

Investment Company Directors SUBJECTS: Audit and Attest

Audit Committees

Compliance

Fund Accounting & Financial Reporting

Fund Governance

Intermediary Oversight

Investment Advisers

Operations

Recordkeeping

Risk Oversight

Valuation RE: SEC Staff Issues Statement on Cross Trading

On December 3, the SEC adopted new Rule 2a-5 under the Investment Company Act, which addresses the fair valuation responsibilities of funds and their boards and advisers.^[1] The Adopting Release discusses the implications of Rule 2a-5's definition of "readily available market quotations"^[2] for Rule 17a-7,^[3] stating that this new definition "will apply in all contexts under the Investment Company Act and the rules thereunder, including rule 17a-7."^[4] Further, "certain securities that had been previously viewed as having readily available market quotations and being available to cross trade under rule 17a-7 may not meet our new definition and thus would not be available for such trades." It acknowledges that funds enter into cross trades in reliance on certain SEC staff no-action letters, and states that "[t]he staff is reviewing these letters to determine whether these letters, or portions thereof, should be withdrawn." However, the SEC also notes that potential revisions to Rule 17a-7 are on the SEC's rulemaking agenda and invites input from the public on this subject.

Yesterday, the SEC staff issued a statement on cross trading.^[5] The statement reiterates the above points from the Adopting Release, and requests "feedback... in evaluating what, if any, recommendations the Staff might make to the Commission in this area." The statement asks several questions, related to:

- Current cross trading practices;
- Securities eligible to cross trade and their pricing and liquidity characteristics;

- Controls; and
- Market transparency

The staff has provided an email box for submitting comments (IM-Rules@sec.gov; the staff requests the responses insert “Cross Trading” in the subject line) and states that “[f]eedback would be most helpful if provided within 30 days after publication of this statement on the Commission’s website.”

ICI will comment. We had already begun work on this submission (which will incorporate results from our cross trading survey from earlier this year), and will circulate a draft response to members for review prior to its submission.

Gregory M. Smith
Senior Director, Fund Accounting and Compliance

Matthew Thornton
Associate General Counsel

endnotes

[1] *Good Faith Determinations of Fair Value*, SEC Release No. IC-34128, Dec. 3, 2020 (“Adopting Release”), available at www.sec.gov/rules/final/2020/ic-34128.pdf. See also ICI Memorandum to Members [No. 32965](#), dated December 4, 2020, for a detailed summary of the fair value rule, its companion recordkeeping rule, and their related guidance.

[2] Rule 2a-5(c) states that “a market quotation is readily available only when that quotation is a quoted price (unadjusted) in active markets for identical investments that the fund can access at the measurement date, provided that a quotation will not be readily available if it is not reliable.” This definition is consistent with the definition of a level 1 input in the fair value hierarchy outlined in US GAAP.

[3] Funds may enter into a cross trade in reliance on Rule 17a-7 only if the “transaction is a purchase or sale... of a security for which market quotations are readily available.”

[4] Adopting Release at 94-95.

[5] *Staff Statement on Investment Company Cross Trading*, SEC Division of Investment Management Staff (March 11, 2021), available at www.sec.gov/news/public-statement/investment-management-statement-investment-company-cross-trading-031121.